

STATEMENT OF PURPOSE

RS 23231

This legislation seeks to "clean up" various provisions in its License Law: 54-2002 to correct a spelling error; 54-2004(44) to broaden the definition of "state or jurisdiction" to include foreign states, provinces & emirates by changing the term "foreign country" to "foreign jurisdiction"; Idaho Code 54-2018(7) and 54-2036 to remove obsolete references to "challenge exam," and to change the term "final exam" to "assessment"; 54-2027(5) to change "working day" to "business day"; 54-2030 to resolve conflicts with other sections; 54-2032 and 54-2033(2) to add the term "post license" inadvertently omitted in previous legislative enactment; 54-2039 to make the term "branch manager" consistent with other references and to clarify the duties applicable to branch managers; 54-2051(4) to clarify that dated signatures are required on all offers to purchase; and to remove an obsolete, confusing and irrelevant section 54-2056(7).

FISCAL NOTE

None to the General Fund. None to the agency's Special Real Estate Account None to any state or local political subdivision.

Contact

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Statement of Purpose/Fiscal Note

Bill No.



Sixty-third Legislature

LEGISLATURE OF THE STATE OF IDAHO



First Regular Session - 2015

IN THE _____

BILL NO. _____

BY _____

AN ACT

RELATING TO IDAHO REAL ESTATE LICENSE LAW; AMENDING SECTION 54-2002, IDAHO CODE, TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 54-2004, IDAHO CODE, TO REVISE DEFINITIONS AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 54-2018, IDAHO CODE, TO REMOVE REFERENCES TO A CHALLENGE EXAM AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 54-2027, IDAHO CODE, TO REVISE REQUIREMENTS OF IDAHO CERTIFIED COURSE PROVIDERS RELATING TO COURSE COMPLETION LISTS AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 54-2030, IDAHO CODE, TO REVISE PROVISIONS RELATING TO THE EXPIRATION OR WITHDRAWAL OF PROVIDER CERTIFICATION AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 54-2032, IDAHO CODE, TO REQUIRE PRIOR APPROVAL OR CERTIFICATION FOR INDIVIDUALS WISHING TO TEACH REAL ESTATE FOR CREDIT TOWARD POST LICENSE; AMENDING SECTION 54-2033, IDAHO CODE, TO PROVIDE INSTRUCTOR QUALIFICATIONS FOR INDIVIDUALS WISHING TO TEACH ANY REAL ESTATE COURSES FOR CREDIT TOWARD THE POST LICENSE; AMENDING SECTION 54-2036, IDAHO CODE, TO REVISE A PROVISION RELATING TO DISTANCE LEARNING COURSES, TO REMOVE PROVISIONS RELATING TO SUBSTITUTING CONTINUING EDUCATION COURSEWORK AND TO REMOVE PROVISIONS RELATING TO RETAKING A CHALLENGE EXAM; AMENDING SECTION 54-2039, IDAHO CODE, TO REVISE PROVISIONS RELATING TO THE BROKER AND BRANCH MANAGER ABSENCES AND CHANGES AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 54-2051, IDAHO CODE, TO PROVIDE AN ADDITIONAL REQUIREMENT FOR WRITTEN OFFERS TO PURCHASE REAL PROPERTY OR ANY INTEREST THEREIN; AND AMENDING SECTION 54-2056, IDAHO CODE, TO REMOVE PROVISIONS RELATING TO TERMINATING RELATIONSHIPS BETWEEN A BROKER AND A SOLE PROPRIETORSHIP OWNED BY A PERSON OTHER THAN THE BROKER.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 54-2002, Idaho Code, be, and the same is hereby amended to read as follows:

54-2002. LICENSURE REQUIRED. No person shall engage in the business or act in the capacity of real estate broker or real estate salesperson in this state without an active Idaho real estate license ~~therefore~~ therefor. Unless exempted from this chapter, any single act described within the definitions of "real estate broker" or "real estate salesperson" shall be sufficient to constitute "engaging in the business" within the meaning of this chapter. Any person who engages in the business or acts in the capacity of real estate broker or salesperson in this state, with or without an Idaho real estate license, has thereby submitted to the jurisdiction of the state of Idaho and to the administrative jurisdiction of the Idaho real estate commission, and shall be subject to all penalties and remedies available under Idaho law for any violation of this chapter.

1 SECTION 2. That Section 54-2004, Idaho Code, be, and the same is hereby
2 amended to read as follows:

3 54-2004. DEFINITIONS. As used in this chapter:

4 (1) "Accredited college or university" means an institution accredited
5 by the regional accrediting associations, as reported in the most current
6 publication of the accredited institutions of postsecondary education.

7 (2) "Acting in this state" means and includes dealing with any inter-
8 est in real property, or a business opportunity involving an interest in real
9 property, that is situated in the state of Idaho, or conducting or attempt-
10 ing to conduct or solicit real estate business with residents of the state of
11 Idaho.

12 (3) "Active license" means the status of a real estate license that has
13 not been inactivated, expired, terminated, suspended or revoked.

14 (4) "Associate broker" means an individual who has qualified person-
15 ally as a real estate broker in Idaho under this chapter, but is licensed un-
16 der, associated with and represents a designated broker in the performance
17 of any act described in subsection (36) of this section.

18 (5) "Branch office" means an office operated by a licensed real estate
19 broker or licensed legal business entity, separate and apart from the main
20 office. A branch office may be licensed or unlicensed, in accordance with
21 this chapter.

22 (6) "Broker price opinion" means a written price opinion of the esti-
23 mated price for identified real property prepared or rendered by an actively
24 licensed broker or associate broker, for a purpose other than a prospective
25 listing or sale, and that complies or purports to comply with the require-
26 ments and content provision of section 54-4105, Idaho Code.

27 (7) "Brokerage company" means a real estate business, whether a sole
28 proprietorship, a legal entity, or any other licensed person engaged in acts
29 requiring a real estate license in Idaho, ~~and which~~ that is conducting or
30 holding itself out as conducting the business of real estate through a des-
31 ignated broker.

32 (8) "Brokerage representation agreement" means a written contract be-
33 tween a buyer, seller, or both, and a real estate brokerage for agency repre-
34 sentation in a regulated real estate transaction.

35 (9) "Business conduct and office operations course" means the compo-
36 nent of the advanced real estate course that is required in order to obtain
37 a broker license and that teaches business practices and office operations
38 of the brokerage, including recordkeeping, trust account procedures and the
39 laws governing those practices.

40 (10) "Business day" means and includes each day of the week except Sat-
41 ursday, Sunday or any other legal holiday enumerated in section 73-108, Idaho
42 Code.

43 (11) "Business name" means the name in which the brokerage company is
44 licensed by the commission.

45 (12) "Business opportunity" means and includes an established busi-
46 ness, good will of an established business, or any interest therein, or any
47 one (1) or combination thereof, where a sale or transfer of an interest in
48 land including, but not limited to, an assignment of a lease, is involved in
49 the transaction.

1 (13) "Commission" means the Idaho real estate commission, unless the
2 context clearly indicates a different meaning.

3 (14) "Commission core course" means the annual course covering the
4 twelve (12) month period between July 1 and June 30, which contains curricu-
5 lum identified by the commission that stresses that year's trends in real es-
6 tate practices and changes in laws in real estate related industries. A core
7 course must contain no more than four (4) classroom hours of instruction.

8 (15) "Continuing education elective course" means a real estate course
9 offering, other than the commission core course for which continuing educa-
10 tion credit hours may be obtained as provided in section 54-2023, Idaho Code.

11 (16) "Convicted" means a plea of nolo contendere or guilty, a jury ver-
12 dict of guilty or a court decision of guilt whether or not a judgment or sen-
13 tence has been imposed, withheld or suspended.

14 (17) "Cooperative sale" means a transaction involving two (2) or more
15 brokers.

16 (18) "Council" means the Idaho real estate education council.

17 (19) "Dealer in options" means any person, firm, partnership, associ-
18 ation or corporation who shall directly or indirectly take, obtain or use
19 options to purchase, exchange, lease option or lease purchase real property
20 or any interest therein for another or others whether or not the options
21 shall be in his or its name and whether or not title to the property shall pass
22 through the name of the person, firm, partnership, association or corpora-
23 tion in connection with the purchase, sale, exchange, lease option or lease
24 purchase of the real property, or interest therein.

25 (20) "Designated broker" means an individual who is licensed as a real
26 estate broker in Idaho and who is designated by the brokerage company to be
27 responsible for the supervision of the brokerage company and the activities
28 of any associated licensees in accordance with this chapter.

29 (21) "Distance learning course" means, in relation to a real estate
30 course offering, a real estate course that is delivered, not as a live
31 course, but through a medium in which the instructor and student are sepa-
32 rated by both distance and time.

33 (22) "Double contract" means two (2) or more written or unwritten con-
34 tracts of sale, purchase and sale agreements, loan applications, or any
35 other agreements, one (1) of which is not made known to the prospective loan
36 underwriter or the loan guarantor, to enable the buyer to obtain a larger
37 loan than the true sales price would allow, or to enable the buyer to qual-
38 ify for a loan which he or she otherwise could not obtain. An agreement or
39 loan application is not made known unless it is disclosed in writing to the
40 prospective loan underwriter or loan guarantor.

41 (23) "Executive director" means the executive director of the Idaho
42 real estate commission.

43 (24) "Expired license" means the status of a license when the license
44 period has expired and the license is not renewed or provisional license
45 granted, and before the license is terminated.

46 (25) "Fee or commission" means a payment, actual, promised or expected,
47 as compensation for the performance of any act requiring a real estate li-
48 cense.

49 (26) "Inactive license" means the status of a license that is not ex-
50 pired, terminated, suspended or revoked, and during which inactive period

1 the license holder is not authorized to act as or associate with a designated
2 broker.

3 (27) "Legal business entity" means and includes any type of corpora-
4 tion, partnership, limited liability company or limited liability partner-
5 ship, a governmental entity, trust or other entity capable of conducting
6 business.

7 (28) "Licensee" means any person who is licensed in accordance with this
8 chapter to engage in the business or act in the capacity of real estate bro-
9 ker, associate broker or real estate salesperson.

10 (29) "Limited broker" means a broker individually qualified to do busi-
11 ness in Idaho, but who may not have associate brokers or salespersons li-
12 censed with that broker.

13 (30) "Live presentation" means, in reference to a real estate course of-
14 fering, a real estate course that is personally presented by the instructor
15 and personally attended by the student at the same facility, or, if separated
16 by distance, the instructor and student are connected by contemporaneous,
17 two-way audio and visual communication.

18 (31) "Main office" means the principal location where the real estate
19 broker is licensed to transact business.

20 (32) "Person" means and includes an individual, or any legal business
21 entity.

22 (33) "Post license course" means a commission-approved or certified
23 elective course that is specifically oriented toward salespersons in their
24 first two (2) years of Idaho practice. The course must contain no more than
25 twelve (12) classroom hours of instruction.

26 (34) "Primary Idaho license" means an Idaho real estate license that is
27 not contingent upon continuance of a license in another state or jurisdic-
28 tion.

29 (35) "Provisional license" means an extension of the period of active
30 licensure, beyond the licensee's expiration date, granted by the commission
31 for the purpose of allowing the licensee to complete the continuing educa-
32 tion requirements set forth in section 54-2023, Idaho Code, or for any other
33 purpose allowed by this chapter.

34 (36) "Real estate broker" means and includes:

35 (a) Any person other than a real estate salesperson, who, directly or
36 indirectly, while acting for another, for compensation or a promise or
37 an expectation thereof, engages in any of the following: sells, lists,
38 buys, or negotiates, or offers to sell, list, buy or negotiate the pur-
39 chase, sale, option or exchange of real estate or any interest therein
40 or business opportunity or interest therein for others;

41 (b) Any actively licensed broker while, directly or indirectly, acting
42 on the broker's own behalf;

43 (c) Any person who represents to the public that the person is engaged
44 in any of the above activities;

45 (d) Any person who directly or indirectly engages in, directs, or takes
46 any part in the procuring of prospects, or in the negotiating or closing
47 of any transaction which does or is calculated to result in any of the
48 acts above set forth;

49 (e) A dealer in options as defined in this section.

1 (37) "Real estate salesperson" or "salesperson" means any person who
2 has qualified and is licensed as a real estate salesperson in Idaho under
3 this chapter, and is licensed under, associated with, and represents a des-
4 ignated broker in the performance of any act described in subsection (36) of
5 this section.

6 (38) "Real estate settlement procedures act" means the real estate set-
7 tlement procedures act of 1974, as amended, 12 U.S.C. section 2601 et seq.,
8 and as in effect on January 1, 2008.

9 (39) "Regular employee" means an individual who performs a service for
10 wages or other compensation and whose employer withholds federal employment
11 taxes under a contract of hire, written or oral, express or implied.

12 (40) "Regulated real estate transaction" means those real estate
13 transactions for which a real estate license is required under chapter 20,
14 title 54, Idaho Code.

15 (41) "Responsible broker" means the designated broker in the regulated
16 real estate transaction who is responsible for the accounting and transac-
17 tion files for the transaction, in the manner described in section 54-2048,
18 Idaho Code.

19 (42) "Revoked license" means a license that has been permanently re-
20 voked by the issuing authority.

21 (43) "Sales associate" means a salesperson or an associate broker li-
22 censed under and associated with a designated broker.

23 (44) "State or jurisdiction" means and includes any state or terri-
24 tory of the United States, the District of Columbia and any foreign ~~country~~
25 jurisdiction that issues real estate licenses substantially similar to
26 those provided for in this chapter.

27 (45) "Successfully completed" means, in reference to a real estate
28 course offering, completing all required course hours and, except where the
29 licensee seeks continuing education credit for having regularly attended
30 the live presentation of a course, passing a commission-approved assessment
31 or final examination.

32 (46) "Surrendered license" means a license that has been voluntarily
33 terminated or surrendered by a licensee who, at the time of the voluntary
34 termination or surrender, was under investigation or named in a formal ad-
35 ministrative complaint.

36 (47) "Suspended license" means a license that has been temporarily
37 suspended by the issuing authority.

38 SECTION 3. That Section 54-2018, Idaho Code, be, and the same is hereby
39 amended to read as follows:

40 54-2018. LICENSE RENEWALS -- INACTIVE LICENSE STATUS -- PERSONAL
41 CHANGES -- EFFECTIVE DATES -- FEES NONREFUNDABLE. (1) Initial license pe-
42 riod. Each new license shall be for a period of one (1) year plus the months
43 up to and including the next birth date of the licensee, not to exceed a pe-
44 riod of two (2) years, and shall expire on the last day of the month of the
45 birth date of the licensee. A salesperson licensed in this state who applies
46 for and obtains a broker license shall retain the license renewal period and
47 expiration date of his salesperson license. Corporations, partnerships,
48 limited liability companies and other entities defined as "persons" in this
49 chapter shall have established as the equivalent of a birth date, the birth

1 date of its designated broker. Licensed branch offices shall have estab-
2 lished as the equivalent of a birth date, the birth date of the designated
3 broker for the branch office.

4 (2) License renewal. Each license shall be renewable for a period of
5 two (2) years by timely submitting a completed application. Applications
6 must be received at the commission office on or before 5 p.m., mountain time,
7 of the expiration date.

8 (a) If renewing an active license, the application shall include:

9 (i) Certification that the applicant has met the commis-
10 sion's continuing education requirements as set forth in section
11 54-2023, Idaho Code;

12 (ii) Certification that the applicant has met the mandatory
13 errors and omissions insurance requirement for real estate li-
14 censees as set forth in section 54-2013, Idaho Code; and

15 (iii) Payment of all renewal fees established by this chapter or by
16 the commission.

17 (b) If renewing an inactive license, the application shall include pay-
18 ment of all renewal fees established by this chapter or by the commis-
19 sion by rule.

20 (3) Late renewal. If the licensee fails to submit a completed applica-
21 tion for renewal or pay the renewal fee on or before the expiration date, the
22 commission may accept a later application or payment of the fee, subject to
23 such conditions as the commission may require including, but not limited to,
24 the assessment of a late fee; provided that between the license expiration
25 date and the date of renewal of the license, the rights of the licensee under
26 such license shall be expired, and during such period of expiration it shall
27 be unlawful for any licensee to do or attempt to offer to do any of the acts
28 of the kind and nature described in the definitions of real estate broker or
29 real estate salesperson in section 54-2004, Idaho Code, in consideration of
30 compensation of any kind or expectation thereof. An expired license that is
31 not renewed within one (1) year of the expiration date shall be automatically
32 terminated by the commission and may not be renewed.

33 (4) Active and inactive license status. A licensee who is a designated
34 broker or associated with a designated broker shall hold an active license.
35 A licensee who has paid all applicable fees, who is not associated with a des-
36 ignated broker and who holds a current license that is not revoked, suspended
37 or terminated shall hold his license on inactive status. A licensee seeking
38 to change from active license status to inactive license status shall have
39 the broker submit a change of status application to the commission in the
40 form and manner approved by the commission. During the period that his li-
41 cense is inactive, the licensee shall not engage in the business or act in the
42 capacity of real estate broker, associate broker or salesperson. However,
43 an inactive licensee may receive a referral fee for any referral made during
44 the period his license was active. A licensee may activate an inactive li-
45 cense by meeting each of the following:

46 (a) If activating as a sales associate, associating with a designated
47 Idaho broker and having the broker submit an application in the form and
48 manner approved by the commission;

1 (b) If activating as a designated broker, establishing an office in the
2 manner required by this chapter and submitting an application in the
3 form and manner approved by the commission;

4 (c) Paying any required fees;

5 (d) Obtaining and maintaining a policy of errors and omissions insur-
6 ance as required by section 54-2013, Idaho Code, and in accordance with
7 the rules of the commission and certifying the same; and

8 (e) Successfully completing any continuing education requirements, as
9 prescribed in section 54-2023, Idaho Code, and certifying the same for
10 the current license period.

11 (5) Continuing education. A licensee shall not submit an application
12 to renew a license on active status or to activate an inactive license with-
13 out having obtained the continuing education credit hours required by sec-
14 tion 54-2023, Idaho Code. A licensee who violates this subsection ~~(5)~~ shall
15 be subject to disciplinary action by the commission.

16 (6) Time required. The commission may request satisfactory proof of
17 continuing education compliance from any licensee who has certified to the
18 commission that he has completed the requirement. The request shall state
19 the time within which the proof must be received at the commission office,
20 which time shall not be less than ten (10) business days.

21 (7) Satisfactory proof. Upon request from the commission, the licensee
22 shall submit satisfactory proof of having met the continuing education re-
23 quirement set forth in section 54-2023, Idaho Code. "Satisfactory proof"
24 shall, for each course, consist of documentation:

25 (a) Identifying the licensee, the title of the course ~~or challenge~~
26 ~~exam~~, the course certification number, the course provider, the number
27 of classroom hours, the completion date of the course ~~or challenge exam~~,
28 and including:

29 (i) A transcript of the course taken;

30 (ii) A letter from the provider verifying successful completion
31 of the course; or

32 (iii) A course completion certificate; and

33 (b) Identifying the course certification approval number to establish
34 that the course is approved for continuing education credit as provided
35 by section 54-2023, Idaho Code. The commission may, in its sole discre-
36 tion, accept alternative documentation establishing that the course is
37 approved for credit.

38 (8) Failure to submit proof. A licensee failing to submit satisfac-
39 tory proof of completing the continuing education requirement after being
40 requested to do so by the commission may have his license inactivated by the
41 commission and shall not be entitled to reactivate the license unless and un-
42 til he provides to the commission satisfactory proof that he meets the con-
43 tinuing education requirements of section 54-2023, Idaho Code. Nothing in
44 this section shall limit the ability of the commission to investigate or dis-
45 cipline a licensee for violating subsection (5) of this section or for vio-
46 lating any other section of this chapter.

47 (9) Change in personal information. An individual licensee, whether
48 active or inactive, shall provide written notice to the commission, in the
49 form and manner approved by the commission, of any change of his personal
50 name, address of personal residence or personal telephone number. Notice

1 shall be provided within ten (10) business days of the change. If the li-
2 censee has changed his personal name, he shall also submit legal proof of the
3 change and, if an active licensee, he shall have the broker submit the writ-
4 ten notice of change to the commission.

5 (10) Issuance of the license and effective date. A real estate license
6 shall be deemed issued, and any requested license changes shall become ef-
7 fective, when the completed application, attachments, and any required fees
8 are received at and approved by the commission. An application that is in-
9 complete or lacking the required fees shall be returned to the applicant and
10 no license shall be issued until a completed application and all required
11 fees are received at and actually approved by the commission. A brokerage is
12 not required to obtain, display or possess a physical license certificate as
13 evidence of the individual's active licensure; however, the commission may
14 make license certificates available for a fee as authorized by this chapter.
15 A brokerage shall not display or otherwise make available to the public a li-
16 cense certificate for any individual who does not hold an active license with
17 the brokerage.

18 (11) Fees nonrefundable. No licensee shall be entitled to a refund of
19 any fee after the license or license change has become effective.

20 SECTION 4. That Section 54-2027, Idaho Code, be, and the same is hereby
21 amended to read as follows:

22 54-2027. DUTIES AND REQUIREMENTS OF ALL CERTIFIED COURSE
23 PROVIDERS. Failure of a certified course provider to comply with the follow-
24 ing duties and requirements shall be grounds for the commission to withdraw
25 or cancel the provider's certification for cause.

26 (1) Discrimination prohibited. Each certified course provider shall
27 at all times be in compliance with state and federal laws, rules and regu-
28 lations regarding all aspects of equal opportunity and protection of civil
29 rights. No course provider shall engage in discriminatory practices, nor
30 allow their course instructor, or method of delivery to violate laws pro-
31 hibiting discrimination. Each course provider will fully comply with any
32 requirements of the Americans with disabilities act regarding access to and
33 delivery of its courses, including the provision of accessible facilities
34 and reasonable accommodations for students.

35 (2) Open access to course offerings. Registration and attendance at
36 all certified courses offered for credit toward the education requirements
37 of this chapter shall be open to all persons meeting normal course pre-
38 requisites; provided however, a certified course provider located in or
39 affiliated with a licensed real estate brokerage company or professional
40 association may refuse access to any licensee or unlicensed person based on
41 that licensee's or unlicensed person's affiliation with another organiza-
42 tion or brokerage company, or the licensee's or unlicensed person's member-
43 ship status in any professional organization unless such course provider has
44 received financial support from the commission for its particular course
45 offering. Nothing in this section shall restrict a course provider from
46 charging a separate and reasonable course fee to nonaffiliated or nonmember
47 licensees or unlicensed persons.

48 (3) Disclosure of fees. All fees charged to a student by a course
49 provider shall be specified separately in writing. If additional fees are

1 charged for supplies, materials or books required for coursework, such
2 fees shall be itemized by the provider and, upon payment of such fees, the
3 supplies, materials or books shall become the property of the student. All
4 fees and the manner in which they are to be paid shall be stated in a student
5 contract, in a form approved by the commission. The student contract shall
6 expressly include the provider's policy regarding the return of fees in the
7 instance where the student is dismissed or voluntarily withdraws from the
8 course.

9 (4) Facilities and supportive personnel. The provider shall provide
10 the facilities and all supportive qualified personnel or approved proctors
11 necessary to adequately implement its real estate program.

12 (5) Student records and other requirements. Each Idaho certified
13 course provider shall comply with the following requirements:

14 (a) Records. For each individual student, create and retain for a pe-
15 riod of five (5) years, a complete, accurate and detailed record which
16 shall include the total number of hours of instruction undertaken and
17 satisfactorily or unsatisfactorily completed in the area of study;

18 (b) Course completion lists. Within five (5) ~~working business~~ days af-
19 ter conclusion of each course of instruction, the provider shall submit
20 to the council or commission, in the form and manner designated by the
21 commission, a list ~~which that~~ shall include the legal names and social
22 security numbers or, if licensed, the license numbers, of the students
23 completing the course of instruction, the name of the course, the name
24 of the instructor, the number of hours included in the course, the date
25 of the course and the location. The list shall be certified by the in-
26 structor from whom the students received instruction and an authorized
27 representative of the provider;

28 (c) Grades. The provider will provide written notification to students
29 who successfully or unsuccessfully complete a course within thirty (30)
30 days of the course completion date;

31 (d) Evaluations. Upon the conclusion of each course, the provider
32 shall collect written evaluations from students for the course and
33 instructor, using an evaluation form approved by the commission. The
34 provider shall keep such evaluations for a period of one (1) year from
35 the course completion date. Upon written request from the commission,
36 the provider shall submit either the student evaluations for the course
37 and instructor, or a written summary of those evaluations using a form
38 approved by the commission; and

39 (e) Course schedules. Each provider shall submit schedules of courses
40 and instructors as requested by the commission and submit changes
41 promptly as they occur. Whenever there is a change in a course in-
42 cluding, but not limited to, a change in curriculum, course length or
43 instructor, the provider shall promptly notify the commission in writ-
44 ing of the change.

45 (6) Instructors. A certified provider may offer a continuing educa-
46 tion elective course without obtaining approval or certification for the
47 course instructor; provided however, the provider shall take reasonable
48 steps to ensure that the instructor is competent to teach the course and
49 shall maintain resumes or other biographical information that documents the
50 qualifications of the instructor. The provider shall make such documenta-

tion available to the public and commission upon written request. A course provider shall not offer for credit any course that is being taught below the minimum teaching standards established by the commission or that is being taught in a manner that is detrimental to the purpose of educating licensees.

(7) Posting and recording fees. The commission may require that course providers pay to the commission a nonrefundable posting and recording fee to defray normal expenses incurred in maintaining the certificate program. The fee amount shall be established by the commission by motion.

(8) Advertising restrictions:

(a) Providers may advertise that they are currently certified by the commission, if current certification has been approved, but no such advertising may state or imply that the provider is an agency of the commission or the council;

(b) No course provider shall provide any information to the public or to prospective students which is misleading in nature. Information is misleading when, taken as a whole, there is distinct probability that it will deceive the persons whom it is intended to influence.

(9) Changes in certification. Certification shall be granted to the particular provider for the specific ownership, provider location, and named individual in charge as designated in the application for certification. Any changes in ownership, provider location, or provider name, or named individual in charge must be submitted for approval to the commission, at least one (1) month in advance of the effective date of the proposed changes.

SECTION 5. That Section 54-2030, Idaho Code, be, and the same is hereby amended to read as follows:

54-2030. EXPIRATION OR WITHDRAWAL OF PROVIDER CERTIFICATION -- NOTICE TO STUDENTS. If a provider's certification expires, is terminated or is withdrawn for any reason, the provider will no longer be approved by the commission, and no credit will be given to students for any courses ~~starting after~~ not yet successfully completed by the expiration date. A provider whose certification has expired, been terminated or withdrawn for any reason, shall immediately notify every present or future student in writing that it is not a certified provider of approved real estate courses in Idaho, and that no credit for prelicense or continuing education will be given for its courses.

SECTION 6. That Section 54-2032, Idaho Code, be, and the same is hereby amended to read as follows:

54-2032. CERTIFICATION OF INSTRUCTORS. All individuals wishing to teach real estate courses for credit toward prelicense, post license or the commission continuing education core course requirements in Idaho must first be approved or certified by the commission for each course the individual wishes to teach.

SECTION 7. That Section 54-2033, Idaho Code, be, and the same is hereby amended to read as follows:

1 54-2033. INSTRUCTOR QUALIFICATIONS. (1) Qualified instructors at de-
2 gree-granting institutions. A qualified or full-time instructor or profes-
3 sor of an accredited college or university in any state or jurisdiction and
4 who teaches real estate-related courses is deemed to be an approved instruc-
5 tor of such courses, in Idaho, for the purposes of this chapter.

6 (2) Other instructor applicants. All other individuals wishing to
7 teach any real estate courses for credit toward Idaho prelicense require-
8 ments, including the business conduct and office operations course, or the
9 post license or the commission continuing education core course require-
10 ments, must first meet the following additional qualifications and receive
11 separate certification for each course to be taught:

12 (a) Unless this requirement is waived upon special review of the com-
13 mission in the manner stated below, no individual instructor seeking
14 certification may have had a real estate or other professional or occu-
15 pational license suspended or revoked for disciplinary reasons or have
16 been refused a renewal of a license issued by the state of Idaho or any
17 other state or jurisdiction. Further, the individual may not have been
18 convicted, issued any fine, placed on probation, received a withheld
19 judgment, or completed any sentence of confinement for or on account of
20 any felony, or any misdemeanor involving fraud, misrepresentation, or
21 dishonest or dishonorable dealing, in a court of proper jurisdiction.
22 The failure of a certified instructor to maintain the qualifications
23 required by this subsection shall be grounds for the commission to
24 withdraw or cancel the instructor's certificate as provided in section
25 54-2025(3), Idaho Code.

26 (b) Each applicant for certification shall also:

27 (i) Submit a completed application for instructor certification
28 in the form and manner required by the commission, with all re-
29 quired fees;

30 (ii) File an executed "irrevocable consent to service of process"
31 in the manner and form prescribed by the commission and according
32 to section 54-2012(1)(k), Idaho Code;

33 (iii) Qualify as at least one (1) of the following:

34 1. An attorney at law actively licensed in any state or ju-
35 risdiction with at least five (5) years of active practice
36 in the areas of study proposed to be taught, and who has also
37 successfully completed a commission-approved instructor
38 training course or procedure, including an assistant teach-
39 ing period;

40 2. An individual currently approved or certified and in good
41 standing as a real estate instructor for the same or similar
42 course material in any other state or jurisdiction;

43 3. An individual who is appointed to teach a nationally rec-
44 ognized real estate course which is generally accepted in
45 other states or jurisdictions; or

46 4. An individual with at least five (5) years active real es-
47 tate-related experience who has also successfully completed
48 a commission-approved instructor training procedure, in-
49 cluding an assistant teaching period.

1 (3) Instructor teaching standards. An instructor certified to teach
2 any real estate course for credit toward the requirements of this chapter
3 shall comply with the minimum teaching standards established by the commis-
4 sion. A certified instructor shall not teach the course in a manner that is
5 detrimental to the purpose of educating licensees.

6 SECTION 8. That Section 54-2036, Idaho Code, be, and the same is hereby
7 amended to read as follows:

8 54-2036. CERTIFICATION OF COURSES AND COURSE CONTENT. Every real es-
9 tate course offered for prelicense or continuing education credit for an
10 Idaho real estate license shall first be certified and accredited by the
11 Idaho real estate commission.

12 (1) An application for course certification must be submitted in the
13 form and manner required by the commission, with the required fees, at least
14 two (2) months prior to the contemplated date of the first course offering.

15 (2) Minimum requirements for course certification:

16 (a) Each course must be certified individually, offered only through
17 a provider certified or approved in Idaho, and taught by an instructor
18 certified or approved in Idaho in accordance with this chapter.

19 (b) Each prelicense course must contain at least twenty (20) classroom
20 hours, and each continuing education course must contain at least two
21 (2) classroom hours.

22 (c) Exam time shall not be included as approved classroom hours of in-
23 struction.

24 (d) A classroom hour is defined as a period of at least fifty (50) min-
25 utes of actual instruction.

26 (e) Distance learning courses. The design and delivery of each dis-
27 tance learning course shall be certified by the association of real
28 estate license law officials or by another institution whose certifi-
29 cation standards are deemed equivalent by the commission. The credit
30 hours for a certified distance learning course shall be based upon the
31 same number of hours which would be credited for an equivalent live
32 course, and must include a commission-approved final exam assessment.

33 (f) Each prelicense course must include a commission-approved final
34 exam requiring a minimum passing score of seventy percent (70%).

35 (g) Continuing education course exam.

36 ~~(i)~~ A licensee may receive continuing education course credit
37 without having to take or pass an exam if the licensee personally
38 attends the entire live presentation of an approved course.

39 ~~(ii) The commission may substitute all or a portion of the contin-~~
40 ~~uing education coursework required when a licensee shows evidence~~
41 ~~of passing a commission-approved challenge exam.~~

42 (h) Exam retake policy. Each certified course provider may, at its op-
43 tion, allow students who complete a course and then fail the course exam
44 one (1) opportunity to retake the approved course exam within the fol-
45 lowing time periods:

46 (i) Prelicense course exam retakes must occur within one (1)
47 month of the original course exam;

48 (ii) Continuing education course exam retakes must occur within
49 that course's certification period;

(iii) If a student fails the retake exam for any prelicense or continuing education course, the student must repeat the entire course and pass the final exam to receive credit;

~~(iv) A course provider shall not permit a student who takes and fails a challenge exam to retake the exam. A student who fails a challenge exam must take the entire course and pass the final exam to receive credit for the course.~~

(i) Challenge exams. Except where the prelicense requirements have been waived or modified by the commission pursuant to section 54-2022(6), Idaho Code, a student shall not earn credit for any prelicense course by challenging and passing the course exam without otherwise completing all course requirements.

(3) Approved topics. The commission shall establish specific, approved topics for course content for prelicense courses and continuing education courses as it deems appropriate to current real estate practices and laws.

SECTION 9. That Section 54-2039, Idaho Code, be, and the same is hereby amended to read as follows:

54-2039. BROKER AND BRANCH OFFICE MANAGER ABSENCES AND CHANGES. Each real estate brokerage company must have a legally qualified individual acting as designated broker at all times. Each branch office licensed under section 54-2016(4), Idaho Code, shall have, at all times, a legally qualified individual acting as branch office manager.

(1) Broker or branch manager absent for more than twenty-one (21) days. A designated broker who is absent from his main office for more than twenty-one (21) consecutive days shall appoint a qualified designated broker of another office, or an associate broker who is licensed and associated with the absent broker, to manage, supervise and oversee the regular office operations of the company in his absence. A branch office manager who is absent for more than twenty-one (21) consecutive days from a branch office in which trust funds and original transaction files are maintained shall appoint a qualified individual to manage, supervise and oversee the regular office operations of the company in his absence. The appointee shall conduct all supervisory activities normally required of the designated broker or branch manager. Except in the event of an emergency, the designated broker or branch manager shall notify the commission in writing of the name of the appointee prior to the broker or manager leaving the office for an extended period of more than twenty-one (21) consecutive days.

(2) Broker or branch manager absent for more than sixty (60) days. A designated broker, or manager of a branch office in which trust funds and original transaction files are maintained, shall not be absent from his main office for a period longer than sixty (60) consecutive days. In the case of such extended absence, another qualified individual shall be designated to act as broker or branch office manager. If a designated broker or branch manager is absent from his main office for a period longer than sixty (60) consecutive days, and no new broker or branch manager is ~~designated~~ appointed to act as broker ~~for the brokerage company~~ or branch manager, the commission shall place on inactive status the licenses of the absent broker or branch manager and of all licensees associated with him, and in the case of a broker-

1 age company, all brokerage listing agreements and all buyer brokerage agree-
2 ments shall be terminated.

3 (3) Change of broker in business entity. A license issued to a legal
4 business entity, as defined in this chapter, is effective only as long as the
5 individual designated broker's license is in active status and in effect. If
6 the individual so designated has a license refused, revoked, suspended or
7 otherwise made inactive by the commission, or if the individual designated
8 broker voluntarily surrenders the individual license or ceases to be con-
9 nected with the entity in the manner required in this chapter, the business
10 entity shall have ten (10) business days in which to designate another qual-
11 ified individual as designated broker before the entity's license is termi-
12 nated, and the licenses of all associated licensees are made inactive.

13 (4) Effective date of changes. No change in designated broker shall be
14 effective until written notice is received and approved by the commission,
15 in the form required.

16 (5) Failure to comply -- Original broker to remain responsible except
17 in the case of revocation. Where a licensed brokerage company fails to com-
18 ply with this section and its office is closed, or during any period where the
19 designated broker has left the brokerage company and no new broker has been
20 designated to act for the company, the original designated broker shall re-
21 main responsible for trust account funds, pending transactions and records
22 in the manner described in sections 54-2041 through 54-2049, Idaho Code.
23 However, if the license of the original designated broker of the brokerage
24 company is revoked, the license of that brokerage company shall be made in-
25 active and its office closed until the company designates another qualified
26 individual to act as broker.

27 SECTION 10. That Section 54-2051, Idaho Code, be, and the same is hereby
28 amended to read as follows:

29 54-2051. OFFERS TO PURCHASE. (1) A broker or sales associate shall, as
30 promptly as practicable, tender to the seller every written offer to pur-
31 chase obtained on the real estate involved, up until time of closing. A pur-
32 chase and sale agreement signed by the prospective buyer shall be deemed in
33 all respects an offer to purchase.

34 (2) Immediately upon receiving any offer to purchase signed and dated
35 by the buyer and any consideration, a broker or salesperson shall provide a
36 copy of the offer to purchase to the buyer as a receipt.

37 (3) Upon obtaining a properly signed and dated acceptance of an offer
38 to purchase, the broker or sales associate shall promptly deliver true and
39 legible copies of such accepted offer to both the buyer and the seller.

40 (4) The broker or sales associate shall make certain that all offers to
41 purchase real property or any interest therein are in writing and contain all
42 of the following specific terms, provisions and statements:

43 (a) All terms and conditions of the real estate transaction as directed
44 by the buyer or seller;

45 (b) The actual form and amount of the consideration received as earnest
46 money;

47 (c) The name of the responsible broker in the transaction, as defined in
48 section 54-2048, Idaho Code;

(d) The "representation confirmation" statement required in section 54-2085(4), Idaho Code, and, only if applicable to the transaction, the "consent to limited dual representation" as required in section 54-2088, Idaho Code;

(e) A provision for division of earnest money retained by any person as forfeited payment should the transaction not close;

(f) All appropriate signatures and the dates of such signatures; and

(g) A legal description of the property.

(5) All changes made to any offer to purchase or other real estate purchase agreement shall be initialed and dated by the parties to the transaction.

SECTION 11. That Section 54-2056, Idaho Code, be, and the same is hereby amended to read as follows:

54-2056. TERMINATING OR CHANGING LICENSED BUSINESS RELATIONSHIPS. (1) Termination of licensed association. A sales associate who terminates his licensed association with a broker shall provide the broker written notice of the termination no later than three (3) business days after the effective date. A broker who terminates the licensed association of a sales associate shall provide the associate written notice of the termination no later than three (3) business days after the effective date. A licensee's written notice to the commission does not relieve him of the duty to provide written notice to the other licensee that he is terminating the licensed association.

(2) New association. The broker shall submit a written application, in the form and manner approved by the commission, for each sales associate licensing with the broker.

(3) Termination for cause. Any broker who terminates the association of a sales associate for the violation of any of the provisions of sections 54-2059 through 54-2065, Idaho Code, shall, within ten (10) business days of the termination, notify the commission, in writing, of the termination and the facts giving rise to the termination.

(4) Closing a branch office. Immediately upon closing a branch office, the broker shall provide the commission written notice of the closure advising of the new status of all licensees licensed with the closed branch. The broker shall remove from public view any license certificates for the branch office.

(5) Property of the broker. Upon termination of the business relationship as a sales associate licensed under a broker, the sales associate shall immediately turn over to the broker all listing information and listing contracts, keys, purchase and sale agreements and similar contracts, buyer brokerage information and contracts, and other property belonging to the broker. A sales associate shall not engage in any practice or conduct, directly or indirectly, which encourages, entices or induces clients of the broker to terminate any legal business relationship with the broker unless he first obtains written permission of the broker.

(6) Location of trust accounts and file records. When an actively licensed broker changes to a license status other than that of a designated broker, that individual must notify the commission in writing of the location of all trust accounts and transaction file records which the broker was

1 responsible for during the term of licensure as a designated broker. These
2 records shall be available to the commission for three (3) years following
3 the year in which each transaction was closed.

4 ~~(7) Terminating relationships between a broker and a sole propri-~~
5 ~~etorship owned by a person other than the broker. When a broker for a sole~~
6 ~~proprietorship, owned by a person other than the broker, terminates an as-~~
7 ~~sociation with the owner, all records and trust account funds shall become~~
8 ~~the property of, and be maintained and disbursed by, the terminating broker~~
9 ~~in accordance with this chapter and applicable rules promulgated thereun-~~
10 ~~der. The terminating broker shall deliver, upon request made in writing by~~
11 ~~the clients and the new broker of that sole proprietorship, such records and~~
12 ~~trust account funds pertaining to that client, to the new broker who shall~~
13 ~~thereafter have the responsibility for preservation and disbursement, in~~
14 ~~accordance with this chapter and applicable rules promulgated thereunder.~~